

EXHIBIT F

308729-4

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. BER-L-7268-16

NEXTGEAR CAPITAL, INC., :
Plaintiff, :
-VS- :
THE LUXURY HAUS INC., and :
ANTONIO L. GUTIERREZ, :
jointly and severally, :
Defendants. :

Oral deposition of **PAUL GUTIERREZ** was taken
at the law offices of Ian J. Hirsch & Associates, 75
Essex Street, Suite 220, Hackensack, New Jersey,
before ANNA MARIA FASCIANO, License No.
30X100200300, a Certified Court Reporter of the
State of New Jersey and Notary Public of the State
of Pennsylvania, on Monday, April 10, 2017,
commencing at 10:25 a.m.

DANER & KIRSH COURT REPORTING SERVICES, INC.
374 Shady Brook Drive
Langhorne, Pennsylvania 19047
215-968-2749 or 609-393-3001
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1 Q. So previously I had asked you, Mr.
 2 Gutierrez, had your brother given you a loan or a
 3 gift, your brother or his business given you a loan
 4 or a gift in excess of \$10,000 and you had said no.
 5 A. Because it wasn't a loan or a gift.
 6 Q. Right. This money wasn't intended for
 7 you to be --
 8 A. Correct.
 9 Q. -- the ultimate holder --
 10 A. Yes.
 11 Q. -- of this money, correct?
 12 A. Absolutely, yes.
 13 Q. So I had also asked you about your
 14 understanding of what happened with Mr. DeMaio,
 15 correct?
 16 A. Correct.
 17 Q. And you said you knew about the million
 18 dollars but you don't know what it was for, right?
 19 A. Right. Yeah.
 20 Q. That million dollars, this is the same
 21 million dollars that your attorney has now
 22 referenced, correct?
 23 A. Correct.
 24 Q. There isn't a second million dollars,
 25 right?

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1 A. No, that's it.
 2 Q. Okay. So your brother had asked you to
 3 hold onto this money. When was that?
 4 A. Right around the same time everything
 5 happened, his wife -- his wife was trying to get --
 6 was trying to, you know, get ahold of the money. So
 7 it was just -- intention of his wife not getting,
 8 you know, not getting the money. And eventually, I
 9 don't know what the million dollars was for, but my
 10 guess was to -- if needed to take care of customers,
 11 anything with NextGear or anything like that.
 12 MR. HIRSCH: I'll object. You're not
 13 supposed to guess. Either you know or you don't
 14 know.
 15 THE WITNESS: Right.
 16 MR. HIRSCH: If you're not sure, then I
 17 don't know.
 18 THE WITNESS: Okay.
 19
 20 BY MR. BUSH:
 21 Q. Okay. When your brother gave you the
 22 money to hold onto, what was your understanding as
 23 to how long you were going to hold onto it?
 24 A. There was no understanding.
 25 Q. Okay. What did you think you were

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1 doing with the money?
 2 A. Nothing. I -- it went to DeMaio. I
 3 literally had it, I mean, a short period of time.
 4 Q. Okay.
 5 A. It went straight to DeMaio.
 6 Q. So when your brother gave you the
 7 money, you knew it was going to DeMaio?
 8 A. Yeah, it went to DeMaio, yeah. I
 9 didn't know -- I didn't know it was going to DeMaio.
 10 He didn't want his wife getting -- getting ahold of
 11 it.
 12 Q. Okay.
 13 A. So it went -- but it went to DeMaio
 14 literally a week later, a week or two weeks later,
 15 if that.
 16 Q. When did you find out it was going to
 17 DeMaio?
 18 A. The same day that he told me. Not when
 19 he gave me the million dollars but the same day he
 20 said I need the million dollars going to DeMaio.
 21 Q. Okay.
 22 A. That same day the million dollars went
 23 to DeMaio.
 24 Q. Between the time you were handed the
 25 money and the time it went to DeMaio, what did you

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1 think was going to happen to the money?
 2 A. Don't know. Don't know. Don't know --
 3 I mean, to my knowledge, it was customers, NextGear
 4 and it was so his wife wouldn't get to it, that's
 5 it. Those are my three understandings. Obligations
 6 that he had. He -- Tony knows that his obligations
 7 was customers, NextGear. Who came first, he didn't
 8 know. But customers and NextGear was -- Tony knew
 9 it was going to be an obligation.
 10 Q. Okay.
 11 A. And the last thing he wanted was his
 12 wife to try to get ahold of that and now he couldn't
 13 meet his obligations.
 14 Q. Okay. When he gave you this money,
 15 were you already working at the Volkswagen store?
 16 A. No.
 17 Q. Okay. So you started working at the
 18 Volkswagen store after you -- after the million
 19 dollars was turned over to DeMaio?
 20 A. After.
 21 Q. Did DeMaio hire you directly or was it
 22 somebody else?
 23 A. DeMaio hired me directly.
 24 Q. Okay.
 25 A. But one thing had nothing to do with

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1 that money. So, you know, he -- listen, he didn't
 2 know who -- who to do right by first, customers or
 3 NextGear or NextGear or customers, you know. So he
 4 was -- to my understanding, he was trying to do the
 5 right thing and making payoffs to customers because
 6 payoffs were made. You know, customers trade in
 7 their vehicles, which -- and I believe NextGear sees
 8 those cars anyway.

9

10 BY MR. BUSH:

11 Q. Okay. So these payoffs or refunds that
 12 were given to customers --

13 A. Refunds that were given to customers.
 14 Payoffs that were made to lending institutions, they
 15 trade in a vehicle, they had to make payoffs. You
 16 know, money got funded, they had to make payoffs. I
 17 mean, deals were funded, so...

18 Q. What account were these from?

19 A. PNC Bank. Or PNC account which the
 20 prosecutor's office has the accounts.

21 Q. And that PNC account was in the name of
 22 The Luxury Haus?

23 A. It was in the name of Luxury Haus, yes.
 24 Luxury Haus of Leonia. And XAM Global. X-A-M
 25 Global, which is my -- it was my company. The

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1 initials of each of my kids. And my son is Xavi, so
 2 I say XAM.

3 Q. What did XAM Global do?

4 A. Nothing. I was on 1099 with Luxury
 5 Haus as of last June, May or June of 2016. Because
 6 of what we were experiencing, I took a huge pay cut.
 7 Because of a pay cut for -- for purposes I went on
 8 1099 --

9 Q. Okay.

10 A. -- so I could show more of a net.

11 Q. Okay. Is XAM Global still existing
 12 today?

13 A. No. After the prosecutor's office, I
 14 got a letter in the mail and they shut down the
 15 account.

16 Q. Okay. Now, the PNC account was Luxury
 17 Haus of Leonia?

18 A. No, that's a TD account. I'm sorry, TD
 19 account. It was Luxury Haus of Leonia.

20 Q. That was TD --

21 A. Which the prosecutor as well has.

22 Q. Okay. So the checks you wrote to
 23 refund to customers were on the TD account?

24 A. Both. Both. Both. Money was used
 25 from both accounts to refund. XAM Global was PNC,

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1 TD was the other one.

2 Q. Okay. So you got the two million
 3 dollars, you split it between these two accounts.

4 A. Yeah.

5 Q. The two million dollars that came to
 6 you was in what form; was it in multiple checks or
 7 one --

8 A. Checks. Checks. Multiple checks.

9 Q. Multiple checks.

10 A. Uh-hmm.

11 Q. Okay. And do you remember what bank
 12 they were drawn on?

13 A. No, I don't.

14 Q. Okay. Do you still have a list of the
 15 customers who you sent refund checks to?

16 A. No.

17 Q. Okay.

18 A. No, everything -- I would get a -- I
 19 would get a text message or a call from Liz. She
 20 would tell me customer name, I would have to get a
 21 certified check. Mainly it was all certified
 22 checks. We also had payroll people still working at
 23 the time. We did payroll out of those accounts as
 24 well.

25 Q. So, but you were acting at Liz's

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1 direction?

2 A. Yeah, Liz. Liz and Tony. Uh-hmm.

3 Q. Do you still have the same phone that
 4 you had at that time?

5 A. No. No. No.

6 Q. You're not sure?

7 A. I'm not sure. I'm not sure because I
 8 did get a phone, this one, because I switched from
 9 AT&T to Verizon. But I think I might have, yes.

10 Q. So you think you have a new phone?

11 A. No, no, I think I might have the...

12 Q. You think you have texts from Liz
 13 telling you which customers to submit refunds to?

14 A. That's what I'm checking now.

15 MR. HIRSCH: What's that?

16 A. See one that...

17 So that's payroll. I can only go back
 18 to that. So I have this, for example. You're not
 19 taking my phone, right, as an exhibit? Sorry.

20 Tony said to call the -- Tony said to
 21 call Dave Martin. Please, very important. That's
 22 the warranty company. Need two \$9,000 cashier
 23 checks. So that's what I -- you know, that's what
 24 they would have me --

25 Q. Those are the kinds of things --